

RESPONSE TO OFFICE ACTION
DATED SEPTEMBER 20, 2004

Appln. No. 10/671,646

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March 21, 2005

REMARKS

This is in response to the Office Action dated September 20, 2004. Reconsideration is respectfully requested.

Request for Extension of Time

Applicants respectfully request that the time period for response to the Action be extended three months, from December 20, 2004 to March 21, 2005 (March 20 being a Sunday). Enclosed is Credit Card Form PTO-2038 authorizing the charge of \$510 in payment of the three-month extension fee pursuant to 37 CFR 1.17(a)(3).

Summary of the Rejections

Claims 1-8 are pending in the application. Claims 1, 3, 4 and 6-8 are rejected as obvious over Japanese Patent Publication JP 404285511 A to Nomura in view of information item AR, listed in the Information Disclosure Statement filed by applicants on September 24, 2003, disclosing a Cal Spas' web page depicting a Cal Spas "Lounger" (hereafter the "Cal Spas design").

Claims 2 and 5 are rejected as obvious over Nomura in view of the Cal Spas design, and further in view of U.S. Patent No. 5,758,200 to Inoue et al.

Summary of the Invention

The invention (hereafter the "Master Spas design") concerns a combination spa and electronic entertainment system for personal therapy and relaxation. The combination spa and entertainment system includes a tub adapted to hold water and accommodate at least one person. A plurality of sidewalls

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surround the tub. A surface extends substantially horizontally from the upper edge of one of the sidewalls to the tub. The surface has an aperture therein. A watertight housing is positioned in alignment with the aperture in the horizontal surface. The housing defines an interior adapted to hold a component of the entertainment system, such as a television. The housing is movable through the aperture between a first position, where it is situated beneath the surface, and a second position, where it projects above the surface. The housing has a cover that projects beyond the perimeter of the aperture. The cover has a sealing area facing the surface. The sealing area is engageable with the surface to effect a seal around the perimeter of the aperture thereby keeping water out of the housing when the housing is positioned beneath the horizontal surface. The combination also includes a mechanism for moving the housing between the first and second positions and a control system for controlling the mechanism.

The Argument

Applicants respectfully traverse the rejection of Claims 1-8 on the basis of obviousness, contending that the information item disclosing the Cal Spas design is not a valid reference because the Cal Spas design is a copy of the Master Spas design, the Master Spas design being an original design that predates the Cal Spas design.

In conjunction with this reply, applicants submit a declaration of prior invention pursuant to 37 CFR 1.131. The declaration is that of Terry M. Valmassoi, a co-inventor of the Master Spas design recited in Claims 1-8, and Executive Vice President of Master Spas, the assignee of the present application.

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In the declaration, Mr. Valmassoi states that the Master Spas design was shown to selected associates of Master Spas (a group of 30 sales representatives and key Master Spas dealers) at a confidential executive council meeting held at the Master Spas' factory in Fort Wayne, Indiana in June of 2000. The Master Spas design was subsequently introduced to the pool and spa industry at the National Spa and Pool Industry (NSPI) Tradeshow, held at the Orange County Convention Center in Orlando, Florida, during November of 2000. Mr. Valmassoi personally attended the show and visited the Cal Spas exhibit. The Cal Spas design, as depicted in the information item cited as a reference in this action, was not on display at this time.

Mr. Valmassoi first saw the Cal Spas design some three months later, at the Aqua Tradeshow, held at the Las Vegas Convention Center on February 6, 2001 in Las Vegas, Nevada. Mr. Valmassoi believes that the Cal Spas design was not in production at that time, and further believes that production models of the Cal Spas design were not available for delivery to dealers until late spring of that year.

In view of the extreme closeness of the Cal Spas design to the Master Spas design, some features of which appear identical, and with the knowledge that the Master Spas design was confidentially shown to selected Master Spas associates more than 8 months before the appearance of the Cal Spas design, and shown to the public more than three months before the appearance of the Cal Spas design, one can only conclude that the Cal Spas design was copied from the Master Spas design based upon information obtained either from the executive council meeting (in violation of confidentiality

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agreements and understandings) or at the aforementioned NSPI tradeshow. As a copy derived from the Master Spas design, the Cal Spas design, and information items disclosing it, cannot be a valid reference supporting and obviousness rejection of any of applicants' claims.

Applicants respectfully request, in view of the evidence presented in the declaration, that the Cal Spas information item be eliminated as a reference, the rejections be withdrawn, Claims 1-8 be allowed, and the application passed to issue.

Respectfully submitted,
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JAC/dml
Enclosure